

CALIFORNIA FAN ALLEGES INADEQUATE SECURITY
AFTER PARKING LOT ASSAULT

NOBLE v. LOS ANGELES DODGERS, INC.
214 Cal. Rptr. 396 (Cal.App. 2 Dist. 1985)
California Court of Appeal, Second District
May 30, 1985

In this case, plaintiffs Philip and Marlene Noble sued the Los Angeles Dodgers for negligently failing to protect them against physical assault by third parties in the parking lot at Dodgers Stadium. The facts were as follows:

Philip and Marlene Noble, in the company of one David McIntosh, attended a night baseball game at Dodgers Stadium. After the game had ended and as they were returning to their car in the stadium parking lot, they observed, what according to them, were two drunks standing by the car - one was vomiting and one was urinating on the car.

Philip Noble remonstrated with the individuals, whereupon the two began to shout obscenities. When David McIntosh approached one of the miscreants one of them struck him. Philip was knocked down and injured when he attempted to intercede in defense of David McIntosh. The actual number of persons involved in this melee is not made clear by the record.

On the night of the incident approximately 52,000 persons attended the ball game. The parking lot which along with the stadium itself covers about 250 acres and which holds 20,000 cars, was full. By the time plaintiffs reached their car, however, the lot was about half empty. Cars were slowly moving out of the lot and large number of persons were still walking through the lot.

The Dodgers had approximately 69 people assigned to security duties on the night in question. Some of those were stationed at various points inside and some outside the stadium. They thus had one security person for every 900 customers. Some were on mobile patrol.

A jury awarded Philip compensatory damages for his injuries and to Marlene for emotional distress in witnessing the injury to her husband. The jury, however, found that Philip was 55% responsible for his own injuries. The Dodgers appealed.

According to the appeals court, the question to be determined by the jury in this instance was "what reasonable steps could have been taken to prevent Noble's injury?"

A landowner is not an insurer of the safety of persons on his property. He does, however, have a duty to take reasonable steps to protect invitees from foreseeable injury even to the extent of controlling the conduct of third parties. It is a sad

commentary but it can be said that in this day and age anyone can foresee or expect a crime will be committed at any time and at any place in the more populous areas of the country. That fact alone, however, is not enough to impose liability on a property owner when a crime does in fact occur on his or her property...

Anyone can foresee that a crime may be committed anywhere at any time. But that foreseeability which the owners of rental property or the proprietors of public premises share with the public at large, does not, per se, impose a duty on such property owners or proprietors to install a "security device" which meets a lay jury's concept of adequacy.

In this particular instance, the Nobles produced an expert who testified that the Dodgers' security was inadequate. Specifically, the expert testified that the Dodgers should have deployed available security differently. Further, in the expert's opinion, the Dodgers should have employed seven more security personnel.

According to the appeals court, however, the expert did not indicate in his testimony how "these additional seven persons or a different deployment pattern would have prevented Noble's injury." On the contrary, the court characterized such testimony as the expert's opinion that "his method of policing the parking lot was better than the one the Dodgers used." As a result, the purpose of such testimony was "simply to critique defendant's security measures and to compare them to some abstract standards espoused by a so-called 'security expert'." In the opinion of the court, this testimony ignored the "critical question" of causation.

It appears that a growth industry is developing consisting of experts who will advise and testify as to what, in their opinion, constitutes "adequate security." The \$64 question, of course, is "adequate for what?" As noted, in each case where such testimony would be relevant, the security in existence has already proven inadequate to prevent the injury which did occur...

The present case is a classic example of a plaintiff establishing, what could be described, as abstract negligence, in the context that the Dodgers' security didn't comport with plaintiffs' expert's or the jury's notion of "adequacy," but failing to prove any causal connection between that negligence and the injury... We understand the law to still require that a plaintiff, in order to establish liability, must prove more than abstract negligence unconnected to the injury.

According to the appeals court, Noble had not argued that "the Dodgers had actual advance knowledge of the conduct of the assailants or of their presence in the parking lot." As described by the court, Noble's theory of liability was "purely and simply that the Dodgers were negligent in failing to effectively deter any and everyone from acting in such a manner."

As described above, the Dodgers had provided one security person for every 900 customers at the ballgame. The court noted that the degree of protection afforded by the Dodgers on the

stadium grounds was greater than that afforded to the general citizenry of Los Angeles by the police department.

The Los Angeles Police Department presently employs approximately 7,000 police officers to police a city of approximately three million people, this computes to approximately one policeman to 425 persons. When we consider that only approximately 1/3 of those police officers can be on duty at any one time during a 24 hour period, the equation becomes one officer to approximately 1200 inhabitants and the officers are scattered over a much wider area than the relatively compact confines of the Dodger complex.

Recognizing "the difficulty, if not impossibility of assessing the efficacy of a particular policing pattern," a state statute (Cal. Govt. Code § 845) provided immunity to public entities and employees for "failure to provide sufficient police protection service" where police protection is provided.

In the opinion of the court, it seemed "anomalous that a public entity which has the primary role in providing police protection is so immunized while persons not generally considered to have the general responsibility [like the Dodgers in this instance] are not so immunized." As described by the court, liability, if any, would have to be based upon "a 'special' foreseeability which sets the landowner apart from the community at large."

In this particular instance, Noble had "offered no evidence that there was any reasonable steps which the Dodgers could have taken to prevent the incident or that inaction on the part of the Dodgers in any way caused Noble's injuries."

There is evidence that during the preceding 66 night games at Dodger Stadium, there had been five reported fights in the parking lot. There of course had been occasional reports of various other types of problems that could be expected whenever large crowds are assembled. Past incidents of misconduct on the part of attendees were, however, more frequent inside the stadium than outside.

In addition, the appeals court noted that Noble's theory of liability against the Dodgers was further weakened by the jury's finding Noble to be the primary cause of his own injury (i.e. 55% responsible). Under such circumstances to impose liability upon the Dodgers would, in the opinion of the court, be tantamount to finding the Dodgers had a duty to control the conduct of the Nobles "or to protect them against themselves." The court rejected this notion.

It could hardly be seriously contended that when someone instigates a fight on the Dodger parking lot, as the jury apparently found that Philip did, that the Dodgers should guarantee that he win the fight or that the other party not fight back.

In the opinion of the court, "the evidence here is simply insufficient to support the judgment." The appeals court, therefore, reversed the judgment of the lower court in favor of the Nobles.